163 U S 346

CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 804.

THE STEAMER "COQUITLAM," &c., THOMAS EARLE AND UNION STEAMSHIP COMPANY, CLAIMANTS, APPELLANTS,

vs.

THE UNITED STATES.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED NOVEMBER 27, 1895.

(16,094.)

> the fee bill or not, is clearly a part of the fees and emoluments of his office.

We therefore submit that the assignment of error is not supported by the law and that the judgment should be affirmed.

J. E. DODGE,
Assistant Attorney-General.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1895.

(16,094.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1895.

1 At a stated term, to wit, the October term, A. D. 1895, of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Monday, the fourth day of November, in the year of our Lord one thousand eight hundred and ninety-five.

Present: The Honorable Joseph McKenna, circuit judge; the Honorable William B. Gilbert, circuit judge.

The Steamer Coquitlam, etc., Thomas Earle and Union Steamship Company, Claimants, Appellants,
vs.
The United States.
No. 200.

It appearing that the above-entitled cause was in due time and in the manner required by the act establishing the United States circuit courts of appeal appealed to this court from the decree of the district court of Alaska, rendered upon the 18th day of December, 1893, and that said cause is a suit in the admiralty brought by the United States for the forfeiture of the steamer Coquitlam by reason of her alleged violation of the revenue laws of the United States, and that the jurisdiction of this court to hear and determine said appeal is disputed by the appellee upon the grounds, first, that this court has no jurisdiction to entertain said appeal under the provisions of section 6 of the act creating the circuit courts of appeal for the reason that said district court of Alaska is not a district court within the meaning of said section and is not a district court belonging to this circuit; and, second, that said district court 2 of Alaska is not a supreme court of a Territory within the meaning of section 15 of said act and the rule of the supreme court assigning appeals from the supreme court of said Territory to this court;

And it appearing that there are other appeals in admiralty causes from said district court of Alaska now pending in this court, and that it is of importance that the question of the jurisdiction of this court to entertain the same be speedily and finally determined, and this court being in doubt concerning the true determination thereof:

It is ordered that the said question whether this court has jurisdiction to entertain the appeal in this cause be, and the same is hereby, certified to the Supreme Court of the United States for its decision, and that the clerk of this court forthwith transmit a copy hereof under the seal of this court to the clerk of the Supreme Court of the United States.

I. Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing to be a full, true, and correct copy of an original order this day entered in the cause entitled The Steamer Coquitlam, etc., Thomas Earle and Union Steamship Company, claimants, appellants, *vs.* The United

States as the same appears of record on the minutes of our said United States circuit court of appeals.

Attest my hand and seal of said circuit court of appeals this 4th day of November, A. D. 1895.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

Endorsed on cover: Case No. 16,094. U. S. circuit court of appeals, ninth circuit. Term No., 804. The Steamer "Coquitlam," etc., Thomas Earle and Union Steamship Company, claimants, appellants, *vs.* The United States. Certificate. Filed November 27th, 1895.

FILED,
APR 20 1896
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE STEAMER COQUITLAM, ETC., THOMAS Earle, and Union Steamship Company, claimants, appellants,
v.
THE UNITED STATES.
} No. 804.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE STEAMER COQUITLAM, ETC., THOMAS Earle, and Union Steamship Company, claimants, appellants, *v.* THE UNITED STATES.	No. 804.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION TO ADVANCE.

Comes now the appellee herein, the United States, and moves this honorable court to advance the above-entitled cause, to be submitted on the printed arguments now on file, to the end that the questions and propositions certified herein by the circuit court of appeals for the ninth circuit may be considered and decided by this honorable court.

And in support of said motion the undersigned shows to the court that this cause is a suit in admiralty brought by the United States in the district court of Alaska for the forfeiture of the steamer *Coquitlam*, etc., by reason of her alleged violation of the revenue laws of the United States, which said court made a decree of forfeiture in favor of the United States, and said cause was, by the claimants therein, in due time and in the manner required by the act establishing the circuit courts of appeal, appealed to the circuit court of appeals for the ninth circuit.

Second. That, as the undersigned is informed and believes, the said cause was fully argued and submitted on its merits and held under advisement for a considerable time by the said circuit court of appeals. That among the questions raised on behalf of the United States, appellee in said court, was that of the jurisdiction of the circuit court of appeals for the ninth circuit to hear and determine the appeal herein upon the grounds, first, that said court had no jurisdiction to entertain said appeal under the provisions of section 6 of the act creating the circuit courts of appeal for the reason that the said district court of Alaska is not a district court within the meaning of section 6, and is not a district court belonging to this circuit; and second, that said district court of Alaska is not a supreme court of a Territory within the meaning of section 15 of said act and the rule of the Supreme Court assigning appeals from the supreme court of said Territory to said circuit court of appeals for the ninth circuit.

It further appears by the certificate herein that there were, at the time of its issuance, other appeals in admiralty causes from said district court of Alaska then pending in said circuit court of appeals for the ninth circuit.

The undersigned does not deem it his duty to submit any argument to this honorable court against the jurisdiction of the circuit court of appeals to review the final decree of the district court of Alaska in this case, a case in which the judgments of the circuit courts of appeal are made final by the act of March 3, 1891, and respectfully submits the questions or propositions of law certified by the circuit court of appeals for the ninth circuit for the decision of this honorable court without argument on behalf of the United States.

He does deem it his duty, however, to add that it is of great importance to the United States that the question of the jurisdiction of the circuit court of appeals for the ninth circuit in this cause should be speedily and finally determined, to which end he makes the motion to advance and submit this cause.

HOLMES CONRAD,
Solicitor-General.

I consent to the foregoing motion.

CALDERON CARLISLE,
Of Counsel for Appellants.

Office Supreme Court U. S
APR 25 1896
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES

THE STEAMER "COQUITLAM," Etc.,
THOMAS EARLE and UNION S. S CO.,
Claimants and Appellants,

vs.

THE UNITED STATES, *Respondent.*

No. 804

Appeal on Certificate from Circuit Court of Appeals for Ninth Circuit on Jurisdictional Question.

BRIEF OF THE CLAIMANTS OF SHIP

JAS. HAMILTON LEWIS,
Advocate for Union S. S. Co. and "Coquitlam."

J. A. STRATTON,
L. C. GILMAN,
Of Counsel.

LOWMAN & HANFORD STATIONERY & PRINTING CO., SEATTLE.

IN THE

SUPREME COURT

OF THE

UNITED STATES

THE STEAMER "COQUITLAM," Etc.,
THOMAS EARLE and UNION S. S CO.,
Claimants and Appellants,

vs.

THE UNITED STATES, *Respondent.*

No.------

BRIEF OF THE CLAIMANTS OF SHIP

On Certificate suggesting the Circuit Court of Appeals for Ninth Circuit the proper Court to review judgments from Alaska.

I.

This cause comes to this Court upon certificate from the Circuit Court of Appeals from the Ninth Circuit, seeking instruction upon the questions:

First. Is there an appeal from the District Court of Alaska to the Circuit Court of Appeals direct provided for or contemplated in the circuit court of appeals act 1891?

Second. And, if so, are such appeals to be lodged, heard and disposed of in the Appeal Court for the Ninth Circuit, holding at San Francisco, California?

Upon behalf of the ship Coquitlam, her claimants, etc., we insist and respectfully urge that both questions must be answered by this Court in the affirmative, *i. e.*, that such appeal does so lie and to and at the ninth circuit, place San Francisco.

And for the grounds and reasons for such answer we urge:

a. That the Circuit Court of Appeals is the only court to which this cause was appealable.

b. That an appeal to any other court would have been unauthorized.

And because

1. That the court is a "District Court" as meant and referred to in the court of appeals act.

2. That the court is an United States District Court within the meaning of all appeals concerning admiralty causes.

3. That the court is a United States Court within the purview of the object of the act to relieve the Supreme Court of the United States of appeals generally from the United States Courts, "district" and "circuit."

And for further ground

1. That the subject matter of the suit compels it to be so appealable only to the Circuit Court of Appeals for that it is one of the "all other cases" than those mentioned in section 5 concerning the Supreme Court of the United States.

2. That the subject matter forces the appeal to the Circuit Court of Appeals, being one of the "revenue cases."

3. That the subject matter further necessarily enforces the appeal to be taken to this Court because the cause is one in *admiralty* arising in the district court.

A summarized review of the statutes creating Alaska and her courts may be at the outset appropriate.

They are:

"Provisions relating to the unorganized Territory of Alaska."

(23 Stat. at Large, 24), U. S. Rev. Statutes, secs. 1953, 1954, etc.

"The laws of the United States relating to customs, commerce and navigation are extended to and over all the mainland, islands and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth day of March, *Anno Domini* eighteen hundred and sixty-seven, so far as the same may be applicable thereto."

Section 1957, R. S., providing that all violations of the laws so "extended to the Territory of Alaska and the waters thereof" shall be prosecuted in any District Court of the United States in California or Oregon, or in the District Courts of the then Territory of Washington, the Territory of Washington having a United States District Court.

In 1884 a civil government was for the first time provided for the Territory of Alaska. (Chapter 53, Laws of First Session 48th Congress; 23 Statutes at Large, p. 24.)

This act concludes in section 14 with the following language:

"That the provisions of chapter three, title twenty-three, of the Revised Statutes of the United States, relating to the unorganized Territory of Alaska, shall remain in full force, except as herein specially otherwise provided."

Section 3 providing:

"That there shall be and hereby is established a District Court for said district, with the civil and criminal jurisdiction of District Courts of the United States, and the civil and criminal jurisdiction of District Courts of the United States exercising the jurisdiction of Circuit Courts, and such other jurisdiction, not inconsistent with this act, as may be established by law."

Section 7 extended the general laws of Oregon then in force to the said district, including powers of issuing writs of error and appeal to the said Alaska court, final review being given the Supreme Court of the United States, as in other cases.

Now, we consider the act creating the Circuit Court of Appeals, and by sections 4 and 6 of said act test the question as to whether the Alaskan Court is one of the courts comprehended.

The legislation, pertinent, of the act of 1891 is as follows:

Section 4 of said act provides that "no appeal, whether by writ of error, etc., * * * shall hereafter be taken or allowed from *any District Court* to the existing Circuit Courts;" and in lieu thereof provides that all judgments of Circuit Courts and District Courts shall hereafter be reviewed either by the Supreme Court of the United States or by the Circuit Court of Appeals according to the provisions of said act regulating such appeals.

Section 5 designating the class of cases in which an appeal may be taken "from the District Courts or from the existing Circuit Courts to the Supreme Court."

Section 6 provides that the Circuit Court of Appeals shall exercise appellate jurisdiction to review final decision "in the District Courts and the existing Circuit Courts," in all cases other than those provided for in the preceding section, unless "otherwise provided by law." Cases arising under the "revenue laws" and in "admiralty" the appeals are directed and declared final. Thus, the complete appellate jurisdiction of the Supreme Court and of the Courts of Appeals was designated by this act, leaving to each its defined class, so as to "free and lighten the other of previous burdens."

II.

Now, is not the Court of Alaska a "District Court of the United States" within the section *four* and six of the act?

There can now be no misunderstanding as to the plain fact that the words of section four abolished and made null the provisions of the law applicable to appeals from the District Court of Alaska to the Circuit or Supreme Court of Oregon, as previously obtaining under the act of 1884.

Now, we cannot assume that the Legislature intended in the creation of the change to cut off all right of appeal from judgments of the Court of Alaska, where such previously obtained. So we are but called on to ascertain where the privilege was lodged when it was—not abolished—but removed.

We answer—as the act had the object of transferring all appeals theretofore permitted (from any Circuit or District Courts to the United States Supreme Court) to the new Court of Appeals, it was therefore the obvious object to direct that in cases—from any source—(not saved by section 5 because of its particular subject matter) which previously could have been heard in the Supreme Court of the United States, be now heard there—at that court no longer—but in that other court created to take up and lift out from the United States Supreme Court docket these extra increasing burdens which by their numerical increase made quite improbable "speedy hearings." It was a relief or substitute court with but the power to hear all cases which without its existence the United States Supreme Court would have had under existing laws to hear and decide. *All cases from "Circuit" and "District" Courts were taken away* from the Supreme Court of the United States, with but an excepting clause acting as a new vesting in the Supreme Court of the United States. To state it otherwise: The legislation did not merely take from the United States Supreme Court a part of its cases to be heard by the Circuit Court of Appeals, thus leaving the act concerning the United States Supreme Court as being modified to a degree—to the contrary—as the object was to give the Court an opportunity to hear and decide the accumulated cases of three years and more of standing.

See remarks Senator G. F. Hoar, Chairman Senate Judiciary, Cong. Record, 1891.

All appeals were taken away and given to the Circuit Court of Appeals with certain reservations and exceptions—the reservations and exceptions in the act creating the Court of Appeals being the legislation which anew created the causes and instances which gave the Supreme Court any control at all in matters purely appealable from the existing "Circuit and District Courts," therefore, and we assert that such applied to any and all *District* or *"Circuit"* Court from which any apppeal could under any condition previously have been taken to the Supreme Court of the United States.

Any other construction denies the act its object—one of complete relief from all appeals which previously could have been taken there.

McLish v. Roff, 141 U. S., 661.

The court said (see page 666):

It is a matter of public history, and is manifest on the face of the act, that its primary object was to facilitate the prompt disposition of cases in the Supreme Court, and to relieve it of the enormous overburden of suits and cases resulting from the rapid growth of the country and the steady increase of its litigation. That act in substance creates a new and distinct Circuit Court of Appeals in each circuit, to be composed * * * (referring to its judges). It then provides for the distribution of the *entire appellate jurisdiction* of our national judicial system between the Supreme Court of the United States and the Circuit Court of Appeals, *by designating* the classes of cases in respect to which each of these two courts shall respectively have final jurisdiction.

And this view is again asserted and this reasoning assumed in

In re., Woods, 143 U. S., 205–6.

In denying jurisdiction to the Supreme Court in the matter, the court said:

"Especially when it is considered that the Circuit Courts of Appeals were created for the purpose of relieving this Court of the oppressive burden of general litigation. * * *

"But in the interest of jurisprudence and uniformity of decision—to use the language of the eminent jurist and statesman who had charge of the bill"—referring to debates of Senators Edmonds and Hoar previously referred to.

Provision was made under section six for such supervision * * * as would guard against inadvertance of conclusion in controversies involving weighty and serious matters, etc.

This case considers the previous ruling in Lau Ow Bew preceeding the one in 144 U. S., 47, 56.

We certainly have seen that the appellate act was to include all "District" and Circuit Courts generally of the United States, any of such courts which were reviewable by the Supreme Court of the United States, is the better way to put it. The words "District and Circuit Courts of the United States" were not words of limitation but words of designation—the popular name of the courts of the United States or of United States matters, as generally called since the judiciary act of 1879. They were names of geographical designation; when for a certain defined locality, called a "district"; when comprising a confined territory, called a "circuit"— taking the English denominations "district," "circuit," etc.

In such sense were the courts of Territories denominated—when for prescribed localities as "district," where more than one court held, first, second, etc., judicial district.

These designations were clearly in the comprehension and understanding of the legislature when the act creating the Court of Appeals was arranged and passed—a mere quotation, an adoption of words previously used in preceding judiciary acts of the United States.

Now, therefore, is not the Alaska court such "district court?"

By the third section of "an act providing a civil government for Alaska" (23 Statutes at Large) the Alaska court is established as "a *district court* for said district, with civil and criminal jurisdiction, etc., * * * of the *United States District Courts* of the *United States*, exercising jurisdiction in civil matters of the United States Circuit Court, etc.

Now, does the language, *any district court*, in the court of appeals act include and comprehend the Alaska court, which, as pointed out, is denominated "*a district court?*"

We adopt the phrase "*any district court*" of section four in the Court of Appeals Act because such is the controlling clause.

The section goes further than merely allowing appeals from said district courts, but forbids any appeals to be longer or further taken from the said district court except as provided by law, and then providing the especial instances permitted by section five (sec. 5) where causes may be sent to the Supreme Court of the United States, provides in section six that *in all cases other than provided in section five (sec 5) the circuit court of appeals shall exercise appellate jurisdiction* to review final *decision in the* district court, unless otherwise provided by law.

The language in section six (sec. 6) saying "the district court" is at once the same use of the phrase and meaning as used and contemplated in the words "any district court" as in section four (4).

So we have the "District Court" of Alaska being the same "District Court" named and comprehended by the Circuit Court of Appeals act providing appeals from "any District Court," etc.

Now we insist that we are sustained by the negative announcements of the Supreme Court of the United States, which became positive in view of the fact that the question is not presented to the court, in all the following cases:

In McAllister v. U. S., 141 U. S., 174.

The Court does not decide that the court is not a "United States" court, nor that the court is not a United States "District Court." But that within the provisions of section 1768 it is not one of the *Courts of the "United States" therein named*—not that it is not a United States Court otherwise understood and meant. In other words the decision is not that the court generally is not an United States Court, or District Court, as a locality, as a description, as one of those courts so designated, but that it was not one of the Courts (or Judges) using the word "Court" interchangeable and synonymous to "Judge" was not the *one* "Judge" or "Court" included in the definition or limitation of *tenure* or *power of presidential removal* as contained in and specially legislated upon in Section 1768 U. S. Rev. Stat. As the occasion of the inquiry only made necessary this consideration we cannot assume any conclusion was intended beyond these necessities, to-wit: to hold the "Judge" not a United States Judge within the meaning of the tenure act of such United States Judge.

To say otherwise would be to deny that the Court was not a United States "Court," and then ask ourselves, whose court is it, who does it serve, who supports it, to whom and to what sovereign does it owe allegiance?

Certainly its creator—the United States—a court of the United States, thus a United States Court exercising its jurisdiction in the limited territory of a district, its district being Alaska, as other Judges have theirs as the Northern, or Southern, or Eastern, or Western district of respective states. But by reason of the nature of a territorial government the Judge of said Court is but an officer of the United States for service in a territory for the uses of the peculiar government of a territory rendered subject to immediate or any necessary change its sovereignty may deem wise to impose, thus no life tenure to anything is given.

But if this conclusion of the Court's meaning be inaccurate, certainly the apparent recognition of the Court as a "District Court" (omitting the words of the "United States") brings it clearly within the appeal act, as the words "District Court" alone is used, and it must have meant any court designated by name "District Court" from which appeal formerly went to Supreme Court of the United States, and in the mind of the Legislature must have been the fact that from territorial courts appeals were allowed, they are recognized as "District Courts" of certain territorial districts, or from Supreme Courts of territories.

Therefore as Alaska has no supreme court of her territory, and supreme courts of territories being provided for, there were but two other kinds of courts known. They were "district" and "circuit." Now, all *district courts* are also *provided for*. So we have the contemplation and comprehension and inclusion of *every court known* (outside of State courts) and *known* and *designated* by the name they are described generally. So thus we have the act embracing *all* courts of high jurisdiction except State courts, *the very object of the act.*

Such construction executes the act, its object, its intent and scope.

Such is the object of construction, to effectuate its object.

To construe otherwise would be to hold all courts provided for except Alaska courts, and—through the appeal previously provided, now cut off. And the designated name of her courts provided for in a *class*, yet she is to be adjudged as not being in the *class*, named, and by the act, intended.

Such construction is obnoxious to Blackstone's announced first canon of construction, saying:

"When a construction is permitted that would be unjust or flatly absurd, such must be rejected as not within the object."

Blackstone Com. (*Chitty ed.*)

So, too, we insist, is the meaning of the case of

Ex-parte Cooper, 142 U. S., 472.

(Keeping in view that the official designation of the Alaska court by the act creating it is, "The *United States District* Court for the Territory of Alaska.")

The Cooper case has to say:

"Although we were of opinion when the application for the rule was made, and subsequently held, that the District Court for Alaska was not one of the courts mentioned in Article III of the Constitution, declaring that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress shall from time to time establish, we nevertheless concluded that where the District Court of Alaska was acting as a District Court of the United States and, as such, proceeding in admiralty, it came within that section, and this Court had power to issue the writ of prohibition to that court in a proper case."

The further reference to the McAllister case by the court we insist justifies our distinguishing, and sustains the conclusions we draw.

In Cross vs. United States, 145 U. S., 576, saying:

"It is contended on behalf of the government that the writ of error will not lie because the Supreme Court of the District of Columbia is not a court of the United States, within the intent and meaning of the section. McAllister vs. the United States, 141 U. S., 174, is cited with the decisions referred to therein, as sustaining that view; but it is to be remembered that that case referred to territorial courts only; and, moreover, if the disposal of the motion turned on this point, the words '*any court of the United States' are so comprehensive* that, used as they are in connection with convictions subject to the penalty of death, *the conclusion might be too technical* that Congress intended to distinguish between courts of one class and of the other."

And in United States vs. Coe, 155 U. S., 85 and 86:

While holding that, in accord with the McAllister case, "the territorial courts were not 'courts of the United States' within provisions therein named," yet said:

"* * * The question is not presented whether it was within the power of Congress to create a judicial tribunal of this character (referring to the Court of Private Land Claims) * * * where the courts of the United States proper are part of the federal system" invested with the judicial power of the United States expressly conferred by the constitution, and to be exercised in correlation with the presence and jurisdiction of the several State courts and governments.

Hornbuckle vs. Toombs, 18 Wall, 648–655:

"And as wherever the United States *exercise the power of government* (as surely it does in Alaska, a government property wholly) whether under specific grant (as was Alaska) or through dominion or sovereignty, etc., * * * *that power* (of government) includes the ultimate * * * *judicial* power * * * and it follows that the judicial action * * * may, in accordance with the Constitution, be subjected to the appellate jurisdiction of the supreme judicial tribunal * * *. *There has never been any question* in regard to this as *applied to Territorial Courts.* * * *

Now, reverting to the Cooper case, it will be seen that the character of the court is determined by "*the nature of the jurisdiction exercised.*"

This is in direct conflict with the assertion in the McAllister case saying its character was derived and *depended* upon the source of power under which *it was established.*

Thus if the fact of whether the Court of Alaska is to be determined by the McAllister case, it is a *Court of the United States* (for general purposes in its territorial limits, though not so under the judicial tenure acts) because *created by the United States by act of Congress.*

If to be ascertained by the Cooper case, for the reason and upon the grounds of the nature of *jurisdiction*, then it is a *District* Court of the United States, as it has given it the jurisdiction in *admiralty* and *criminal* law of a United States District Court, and the same as—(See acts quoted, *ante*).

The whole purpose is but to show it a court meant within the construction of the appellate acts concerning courts deriving authority and exercising jurisdiction under the laws of the United States, such construction is, as we said, clear and necessary to execute the object of the act, as this court said in Lau Ow Bew v. United States, 144 U. S., 47-56:

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative *intention*, and, if possible, so as to avoid an unjust or an absurd conclusion."

Church v. U. S., 143 U. S., 457.
Oates v. Nat. Bank, 100 U. S., 239.
Henderson v. Mayor, 92 U. S., 259.

This but follows clearly the rule, that *words* like "District Court" are to be regarded as "District," just as used, evidencing the view that the word is used as previously, with the same purview and definition and the same general comprehension.

Endlich Int. Stat., §§ 75-76.
Black Co. v. Com., 94 Pa. St., 450.

So general words in a statute should receive a general construction unless there is something in the *statute* to restrain them.

Jones v. Jones 18 Me., 310.
Burke v. County, 77 Ill, 610.
McBride's Appeal, 72 Pa. St., 480.

In Nuth vs. Tamplin, 8 Q. B. D., 247, Jessel, Master of Rolls, said:

"Any one who contends that a section of an act of Parliament is not to be read literally must be able to show one of two things, either that there is some other section which cuts down its meaning, or else that the section itself is repugnant to the general purview of the act."

"Unless otherwise provided," etc.

It is strenuously contended that the appeal from judgments of the District Court of Alaska is preserved to the Supreme Court of the United States by the word in section six of the appeal act, unless otherwise provided by law—that is, appeals are ordered to the Circuit Court of Appeals unless provided otherwise by a law. And it is therefore urged that another law does provide for appeals to the Supreme Court of the United States, to-wit, the act of 1884, existing and being in effect previous to the passage of the circuit court of appeals act.

We must deferentially urge that there is no merit in this assumed exception, for obvious reasons.

1. The circuit court of appeals act covers the whole subject of appeals; was so intended; a thorough revision; and thus by the general implication repealed and abolished existing laws on the same subject previously existing—an elementary and fundamental doctrine.

Norris vs. Crocker, 13 Howard, 429.
U. S. vs. Claflin, 97 U. S., 546.

Even were we not confronted with this irrefutable doctrine, we have the other fact, that the old act concerning the Alaska courts (and other courts) prescribing appeals to the Supreme Court of the United States are repugnant and inconsistent with the object and scope of the circuit court of appeals act therefore repealed by the circuit court of appeals act in express terms.

See sections 5 and 6 of the act of March 3, 1891. See therefore section 14 of said act.

2. But should this view be unnecessary, or inaccurate, we have the words themselves, with the general doctrine of such in their place, as placed to govern them.

The words "unless otherwise provided by law" in a general act do not mean *unless otherwise provided by some other law*, or unless provided by *a law* otherwise, but the word "this" must be read in between the words "by" and "law" (where there are many sections especially), *so as to read unless provided otherwise by this law*, or *unless otherwise by this law provided.*

This is necessary in order that a general law covering the whole subject matter might not be doubted as so doing, and so intending, and thus leave the confusion incident, to-wit, which "otherwise law" is here kept alive, and which "otherwise law" is intended to be avoided? So it but relates to *provisions* in the same law *otherwise* than the one in which the subject is then being addressed.

This is a general doctrine in construction under conditions like this.

Referring to the tariff act of 1864:

"The question arose upon the concluding words of the eighth section * * * 'on all manufactures of silk or of which silk is the component material *not otherwise provided for,*' what was the meaning of these italicised words? Was the act a complete tariff act as to silk, and did they mean *not provided for* by preceeding *parts of the section* of which they made the closing words? Or was the act only additional to former tariff acts about silk, and do they mean not *provided for by former acts?*"

Say the Court, Mr. Justice Swayne delivering the opinion:

"The object of the statute was to increase the duties before imposed upon the things which it embraces. The title and the context alike show this. The preceding part of the section contains a very full enumeration of silks, manufactured and unmanufactured. It was *evidently intended to be exhaustive.* The last clause seems to have been added * * * out of abundant caution, that nothing might escape. *Hence* the *phrase not otherwise provided for* * * * was meant to apply *not to preceding acts* * * * *but to the preceding enumeration in the same section* which it *supplemented.* * * *

"The section covered the whole subject of silks in all its variety of forms (as the act in question does the United States Courts). It was complete in itself. * * * There was no need to refer generally or specifically to any prior act. *If there was a conflict the prior legislation yielded necessarily, ipso facto, to the later.*"

And this ample annunciation was practically repeated, though not cited by this Court in construing *these very words in this very act.*

Saying,

"The words 'unless otherwise provided by law' were manifestly inserted out of abundant caution, in order that any qualification of the jurisdiction by contemporaneous or subsequent acts should not be construed as taking it away, except when expressly so provided. * * *

" *To hold that the words* referred to *prior laws would defeat the purpose of the act and be inconsistent with its context and its repealing clause.*"

POINT II.

As we now see that by the very force of the act, its general construction, there is left no *prior* law to be referred to, being implied or expressly repealed, or by the doctrine of construction of the phrase "otherwise provided by law" in nowise referred to, we are *ex necessitate* driven to the only "otherwise law," to-wit: other sections of the appeal act to find if the Alaska Court is otherwise provided for.

We have but one section to examine as it is the only one bearing on the subject, to-wit: Section five (Sec. 5.) This is clearly exclusive, mentioning only the few cases appealable to the Supreme Court of the United States of which the Court of Alaska is not one, but like all district courts wholly omitted, and to the contrary placed by name of "District Courts" in the category of sections 4 and 6.

Thus we are met with the condition unqualified that all *district* courts are only *provided* for in sections four and six, to-wit: to be reviewed in the Circuit Court of Appeals.

See act, sections 4 and 6, quoted.

We confidently assert that these views are amply borne out by Wales v. Whitney, 114 U. S., 564, and in the full observations of the court, though *dicta,* the question of jurisdiction not being before the court in

In re Heath, 144 U. S., 93.

These views render the apparently ill-considered conclusion in

Huntington v. Saunders, 72 Fed. Rep., 11,

as of no force.

(The opinion shows no authority was cited for its hasty conclusion.)

The Government recognition of the Alaska Courts as United States Courts, District Courts, etc.

We respectfully urge that the Government, in its legislative and judicial departments has ever recognized and dealt with the Alaska Court as a "United States Court," as a District Court "for Alaska."

We do not offer these views to show a variance, and thus a refutation of the views of the McAllister case, but to show merely that the designation of the court, its recognition by a certain title and as being from a certain authority, and such designation by the *authority giving* its *life to it*, was used in a sense then as it was subsequently intended when used by the same authority in subsequent references in legislation, etc., upon the same subject, in the same manner of dealing, to-wit: Legislation.

1. The title of the act creating the court styled it "The United States *District* Court for the Territory of Alaska."

Such title can ever be looked to to aid in arriving at the designation of the purpose or subject of the act.

United States vs. Fisher, 2 Cranch, 386.
United States vs. Palmer, 3 Wheaton, 631.

2. Also in providing appropriations for this Court the same legislature from its judiciary committee placed these appropriations, not under the Territorial Courts, but under the head *United States Courts.*

See

24 Statute at Large, 253, 541, 687.
25 Statute at Large, 544, 976, 977.
26 Statute at Large, 409, 527, 986.
27 Statute at Large, 385, 608, 702.
28 Statute at Large, page —— (Session 1895-6).

This is only offered, not as precedent of authority, but as a feature going to show the simultaneous and synonomous, also contemporaneous recognition of terms and the meaning as usually granted to them.

These departmental definitions and classifications, placing in a different category from Territories, are of weight, ever being looked to, and ever regarded with solicitude and respect, often in absence of a higher judicial authority, binding on the courts.

Edwards vs. Darby, 12 Wheaton, 206.
United States vs. Dixson, 15 Peters, 141.
United States vs. Gilmore, 8 Wallace, 330.

3. Also it is recalled that upon this view the Circuit Court of Appeals has taken jurisdiction of appeals from this source under the *apparent* justification of the legislative phrases.

Likewise, the Supreme Court of the United States, in assigning the District of Alaska to the Ninth Circuit.

See

139 United States, 707.
Order of May 11, 1891.

Now all this does not necessarily convince that there must be jurisdiction, but it is meant to show how those dealing with the act, and who had power to recognize its terms and give construction to its meaning regarded the words used and how they understood its meaning, and to this extent is of great weight to show that the *act* has *ever borne* easily the *construction* now contended for.

As in Stuart vs. Laird, 1 Cranch, 309, where the right of the judges to sit is impugned, the court said:

"It is sufficient to observe that practice and acquiesence under it (meaning the act) for a period of several years, commencing with the organization of the system, affords an irresistable answer, and has, indeed, *fixed the construction. It is contemporary interpretation of the most forcible nature.*

We urge that the views here insisted upon are sustained by the reasoning in

Shute v. Keyser, 149 U. S.. 651.

Where the subject matter is specifically made the test of the *place of appeal* and the "Court" only the test of the manner of taking the same.

Followed in

Aztec Mining Co. v. Ripley, 151 U. S., 79.

All referred to and the distinction made when the Circuit Court of Appeals have jurisdiction, to-wit: In *all matters* where the *judgment of* such court would *be final*..

Here in this regard treating *"Territorial Courts" and "District Court"* as synonymous and in effect as concerns the Circuit Court of Appeals.

Folsom v. United States, 160 U. S., pages 126-7.

POINT III.

Quare. Is not, or is the judgment of the Alaska Court a judgment of a "*Supreme Court of a Territory*" within the meaning of the law?

While we have not been agreeable to the view that Alaska is a territory in the sense of her judiciary, or has been so treated, or now should so be regarded, insisting rather that it was a "District," a Judicial District of the United States for "Alaska Territory," feeling that in the sense of Territorial Courts as used Alaska had none of the situation or autonomy of "Territories," as they are created as governments. Yet the argument and presentation of the *contra* of this view by Hon. E. C. Hughes, of counsel for cargo owners, is such in its lucidity and strength that if not modifying it does offer a different coloring to our conception of the word "Supreme" in the connection used.

So we assume to offer his argument on this point to be considered in our behalf; assume to offer nothing to its direct bearing for the apparent reason that if well taken we cannot add to what is said, and if it were permitted us to equal it such would be but a repetition and add no strength.

We assume with confidence to strengthen the position by the only thing to be added, to recall to the mind of the Court the eminent standing of the counsel urging the distinction.

(*a*) We would, however, tender here this separate phase to this view, to-wit: That should this Court conclude the Court of Alaska a "Territorial Court," and thus having appeals from such Court to the Supreme Court of the United States only, as intimated in

Ex-parte Cooper, 133 U. S.
Schute vs. Keyser, 149 U. S.
Aztec Mining Co. vs. Ripley, 151 U. S.

Also fully referred to in

Folsom vs. United States, 160 U. S.

Then we now urge that in THIS *case at bar* is the *one case and of the class particually excepted* from the rule therein laid down, and *belongs particularly* to the *Circuit Court of Appeals* even if the *appeal* is to be regarded as from a Territorial Court,

Because this case is one made final in the Circuit Court of Appeals.

Because this is a case for "Revenue."

Because this is an Admiralty case.

(See Record—Certificate of Question, page 1.)

In Schute vs. Keyser, 149 U. S., 650, say the Court:

"By the sixth section the Circuit Court of Appeals established by the Act, were to exercise appellate jurisdiction to review by appeal * * * *final* decisions of the *District* and * * * Courts in all cases other than those provided for in section 5 and the judgment *final* in all cases arising under the * * * *revenue laws* * * * and in *admiralty cases*, and that by section *fifteen* the Circuit Court of Appeals (where such judgments were made final) *should have the same appellate jurisdiction* by writ of error, etc., to review the judgments, etc., of *Supreme Courts of Territories* as by the Act they may have had as to *District* and Circuit Courts."

(Not literally quoted—only immaterial sentences omitted.)

And in Aztec Mining Co. vs. Ripley, 151 U. S., 80, after saying that cases included in section six (6) belongs to the Circuit Court of Appeals, adds, "But as this case (meaning the case under discussion) was *not a case in admiralty* * * * or arising under the *revenue* laws, etc., it did not belong to the Circuit Court of Appeals," clearly saying by converse assertion, that though the cause is from a Territory (New Mexico) yet had it been for either of the subjects named its appeal was correctly to be lodged in the *Circuit Court of Appeals.*

And in the latest announcement, in Folsom vs. United States, 160 U. S. 127, say the Court:

"The fifteenth section confers appellate jurisdiction on the Circuit Courts of Appeals, to review judgments of the Supreme Courts of the Territories, *but it is in terms the same appellate jurisdiction* as conferred by the sixth section in respect of the judgments of the *District* and Circuit Courts."

Saying on page 124, "The judgments of the Circuit Court of Appeals shall be final in all cases * * * arising under the *revenue* laws and in *admiralty* cases."

So in either view to be taken the case at bar is within the preserved exceptions to the cases permitted the Supreme Court of the United States from Territorial Supreme Courts.

IV.

"In all other cases, etc."

The section six gives the Court, *i. e.*, a *District Court* or even Territorial Court jurisdiction in all other cases not mentioned in section 5 of the act.

Construed as herein claimed, as one of the "other cases" not included in the section 5 of the grant to the Supreme Court in

Warehouse v. Surveyor, 1 C. C. A., 337.
Case v. Case, 1 C. C. A., 374-375.
Duff v. Carrier, 5 C. C. A., 178-9.

It is a case "*arising under the revenue laws.*"

See Act 1891, Sec. 6.

See the adjudications sustaining this view:

United States v. Hopewell, 2 C. C. A., 512-513 (*re-affirming 1 C. C. A., 379*).
See ex-parte Cooper, 133 U. S., 47-64 (*see pages 62-64*).

"Particularly are such appeals permitted in *Revenue Cases.* To hold otherwise would defeat the object and purpose of the act."

This sustains the view in

U. S. v. Hill, 123 U. S., 683,

followed in

Collector v. U. S., 49 Fed., 561.
See Schute v. Keyser, 149 U. S., 649 (*cited and quoted ante*).
Mining Company v. Ripley, 151 U. S., 82 (*cited and quoted ante*).
Folsom v. United States, 160 U. S., 126 (*cited and quoted ante*).

POINT V.

This however in *subject matter is a case in admiralty.*

Whatever views the Court may be called upon to indulge as to "common law" or "equity cases" (such as involved in the Noyes v. Queen Mining Co., certified before this Court).

The case at bar is unquestionably distinguished from any features governing such causes *because it is an admiralty case.*

Either from the standpoint of the Alaska Court—

(*a*) Being a Territorial Court.
(*b*) Being a District Court.
(*c*) Being a United States Court, or
(*d*) Being an United States District Court.

The right of appeal in *admiralty cases* is in either event reserved to the Circuit Court of Appeals.

See in re Cooper, 143 U. S., 472.

Saying upon application for prohibition, from Alaska, etc.:

"We (referring to the McAllister case) nevertheless concluded *that* where the *District Court* of *Alaska* was *acting* as a *District* Court of the United States, and as such proceeding in *admiralty* it came within that section, etc. (referring to sections concerning United States Courts, United States District Courts, etc.), under Section 688, Revised Statutes.

This was recognized as a proper distinction in

Cross v. United States, 145 U. S., 576 (quoted ante).

So when proceeding in admiralty the Court of Alaska is an United States Court—an "United States District Court."

This aside from every other phase brings the case within sections 4 and 6 of act of Circuit Court of Appeals, 1891.

Re affirmed in the following cases:

Aztec Mining Co. vs. Ripley, 151 U. S., 650.

Following

Schute vs. Keyser, 149 U. S., 79.

And again referred to in

United States vs. Folsom, 160 U. S., 127.

That the Court of Alaska exercises in admiralty the same jurisdiction as is exercised by the United States District Courts cannot be questioned.

Act of Congress, 23 Statute at Large, p. 24, May 17, 1884.

"Under this act and section first, this Court acquired all admiralty jurisdiction within the District of Alaska as exercised in any District Courts of the United States."

The City of Panama, 101 U. S., 453.
Ex parte Cooper, 143 U. S., 472.

Likewise all *revenue* laws and customs regulations were extended.

We offer as a suggestion of the nature of the cause the brief recital on pages 1 and 2 and 19 and 20 of brief of Hon. E. C. Hughes for cargo owners, also the Certificate of Question to this Court from the Court of Ninth Circuit.

To What Circuit Assignable?

Certainly it is in view of the order of the Supreme Court of the United States made as appears in 139 U. S., cited, the Ninth Judicial Circuit for Appeals, holding at San Francisco is apparent.

Most respectfully submitted,

JAS. HAMILTON LEWIS,
Advocate for Union S. S. Co. and "Coquitlam."

J. A. STRATTON,
L. C. GILMAN,
Of Counsel.

FILED
JAN 15 18[illegible]
JAMES H. McKENNEY,
CLERK.

SUPREME COURT
OF THE
UNITED STATES

October Term, 1895

No. 804.

THE STEAMER "COQUITLAM," &c., THOMAS EARLE AND UNION STEAMSHIP COMPANY, CLAIMANTS, *Appellants*,

VS.

THE UNITED STATES.

On a Certificate from the United States Circuit Court of Appeals for the Ninth Circuit.

Brief on Behalf of Appellant Thomas Earle.

E. C. HUGHES,
Attorney for Thomas Earle, Appellant.

H. G. STRUVE,
J. B. ALLEN,
MAURICE McMICKEN,
Of Counsel.

LOWMAN & HANFORD STATIONERY & PRINTING CO., SEATTLE.

[16,094].

[16,094].

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On a Certificate from the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF ON BEHALF OF APPELLANT THOMAS EARLE.

This suit was instituted by the Government in the United States District Court for the District of Alaska. A seizure was made of the steamer Coquitlam and her cargo of seal skins by the United States Revenue Cutter Corwin, and subsequently a libel was filed by the District Attorney, asking a forfeiture of the steamer and her cargo for alleged violation of the revenue laws of the United States. A decree of forfeiture was rendered in the District Court of Alaska on the 18th day of September, 1893, and within the time provided by law, an appeal was taken from that decree to the Circuit Court of Appeals for the Ninth Circuit. This appeal was submitted upon the merits at the February term, 1895, of the said Court of Appeals, with leave to counsel for the Government to file a brief thereafter. In the meantime, in other causes pending on appeal from the District Court of Alaska, the question of jurisdiction of the Circuit Court of Appeals over causes appealed from the said District Court had been raised and thereupon the point was made in the brief of respondent. In consequence the Circuit Court of Appeals has arrested the determination of this cause upon its merits and has certified the question of its jurisdiction to this Court. Upon this certificate, two questions arise, to-wit:

First, whether the District Court of Alaska is a district court within the meaning of section 6 of the Act creating the Circuit Court of Appeals and is a district court belonging to the Ninth Circuit; and,

Second, whether the District Court of Alaska is a supreme court of a Territory within the meaning of section 15 of said act and the rule of this Court assigning the Territory of Alaska to the Ninth Circuit.

The questions here presented involve the construction of the Act of March 3rd, 1891 (26 Statutes at Large, page 827), entitled, "An Act to establish Circuit

Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes." An intelligent discussion of these questions will be aided by a brief history of the legislation bearing on the subject. Since the purchase of Alaska from Russia, it has always been treated by Congress as a Territory of the United States. Indeed, it could not well be considered in any other light than as a Territory. The first Act, passed July 27, 1868 (Volume 15, Statutes at Large, p. 240), spoke of it as a Territory. The provisions of that Act are, among others, embraced in Chapter 3 of Title 23 of the Revised Statutes of the United States, under the subject of "Provisions relating to the unorganized Territory of Alaska."

Section 1954, R. S., is as follows:

"The laws of the United States relating to customs, commerce and navigation are extended to and over all the mainland, islands and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington, on the thirtieth day of March, *Anno Domini* eighteen hundred and sixty-seven, so far as the same may be applicable thereto."

Section 1957, R. S., provides that all violations of the laws so "extended to the Territory of Alaska and the waters thereof" shall be prosecuted in any District Court of the United States in California or Oregon, or in the District Courts of the then Territory of Washington.

In 1884 a civil government was for the first time provided for the Territory of Alaska. (Chapter 53, Laws of First Session 48th Congress; 23 Statutes at Large, p. 24.)

This act concludes in section 14 with the following language:

"That the provisons of chapter three, title twenty-three, of the Revised Statutes of the United States, relating to the unorganized Territory of Alaska, shall remain in full force, except as herein specially otherwise provided."

Section 3 contains the following provision:

"That there shall be and hereby is established a District Court for said district, with the civil and criminal jurisdiction of District Courts of the United States, and the civil and criminal jurisdiction of District Courts of the United States exercising the jurisdiction of Circuit Courts, and such other jurisdiction, not inconsistent with this act, as may be established by law."

Section 7 extends the general laws of Oregon then in force to the said district.

General common law and chancery powers are conferred upon said Court, together with full power to administer the criminal laws of the State of Oregon. Commissioners' Courts are also provided for, which are constituted courts of inferior jurisdiction, and from whose judgments appeals lie to the said District Court. Except in criminal cases, the Supreme Court of the United States was empowered to "review the final judgments or decrees of the District Court of Alaska, as in cases of the same kind from other courts".

In re Cooper, 143 U. S., 511.

Having thus briefly reviewed the legislation creating and defining the jurisdiction and powers of the District Court of Alaska, we invite the attention of the Court to a brief consideration of the two questions presented by the certificate of the Court of Appeals.

I.

Is the District Court of Alaska a district court within the meaning of section 6 of the Act creating the Circuit Court of Appeals and is it a district court belonging to the Ninth Circuit?

Section 4 of said Act provides that "no appeal * * * shall hereafter be taken or allowed from *any District Court* to the existing Circuit Courts;" and in lieu thereof provides that all judgments of Circuit Courts and District Courts shall hereafter be reviewed either by the Supreme Court of the United States or by the Circuit Court of Appeals according to the provisions of said Act regulating such appeals.

Section 5 specifies the cases in which an appeal shall be taken "from the District Courts or from the existing Circuit Courts to the Supreme Court".

Section 6 provides that the Circuit Court of Appeals shall exercise appellate jurisdiction to review final decision "in the District Courts and the existing Circuit Courts," in all cases other than those provided for by Section 5, unless otherwise provided by law; and in all cases arising under the revenue laws and in admiralty cases such appeals are declared final. Thus, the entire appellate jurisdiction of the Supreme Court and of the Courts of Appeals was distributed by said Act.

McLish vs. Roff, 141 U. S., 661-666.
Lau Ow Bew vs. U. S., 144 U. S. 56.

It is first to be determined whether the term "district court," as used in this Act, embraces the District Court of Alaska, as well as the United States District Courts for the several states of the union. It must be conceded at the outstart that a well-defined distinction has been uniformly recognized by this Court between the District Courts for the several Territories created by Act of Congress and the District Courts for the several states created in pursuance of the Federal constitution.

See McAllister vs. United States, 141 U. S., 175, and the cases there cited.

Section 1 of Article III of the Constitution provides that, "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish."

It is, we believe, uniformly held by this Court that the latter portion of this section of the constitution refers only to the Federal courts created by Congress within the several States of the Union, and the courts of the Territories are distinguished therefrom as courts created by virtue of the general powers which Congress possesses to make all the needful rules and regulations respecting the public territory of the United States.

City of Panama, 101 U. S. 460.
Clinton vs. Englebrecht, 13 Wall. 447.
American Ins. Co. vs. Carter, 1 Peters 545.

We contend, however, that the District Court of

Alaska is nevertheless a court of the United States. It is true, under the authorities, that it was not created in pursuance of the provisions of Section 1, Article III, of the Constitution. It was, however, created by Congress; and for the purpose of determining the character of the court in this case, it is immaterial from what source Congress derives its power. In the case at bar, the district court was administering the revenue laws of the United States. It sat in admiralty and was thus exercising a jurisdiction expressly reserved to the Federal courts.

Section 2 of Article III of the Constitution provides, among other things, that "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; * * * to all cases of admiralty and maritime jurisdiction," etc.

The Act of 1884 providing a civil government for Alaska in establishing the District Court, gives it the "civil and criminal jurisdiction of district courts of the United States." (Section 3.)

The district courts of the United States have jurisdiction "of all civil causes of admiralty and maritime jurisdiction." (Revised Statutes, 563, subdivision 8.)

It necessarily follows, and indeed the Supreme Court has expressly so held, that the District Court of Alaska acquired all the admiralty jurisdiction within the district of Alaska belonging to the district courts of the United States.

In re Cooper, *143 U. S. 494*.
The City of Panama, *101 U. S. 453*.

In the case of McAllister *vs.* United States, *supra*, the opinion of the majority of the court rests upon the conclusion that the words, "judges of the courts of the United States," in Section 1768, were used with reference to the distinction, heretofore pointed out, between courts created in pursuance of Section 1 of Article III of the Constitution and those created in virtue of the plenary power of Congress to provide a judicial system for the Territories. This decision has no necessary application to the case at bar. The court was in that case construing a statute wholly different from that creating the Circuit Court of Appeals. It rightly determined that the District Court of Alaska was not created under the authority of the third article of the Constitution. After reviewing the authorities upon which this conclusion was based the court thereupon announced the conclusion that the District Court of Alaska did not fall within the exception specified in Section 1768 and affirmed the power of removal in the President. (See foot of page 184.) Whether this conclusion was a logical sequitur from the single premise assumed, it is not important here to consider. It does not follow, however, that because the District Court of Alaska is not created under the authority of Article III of the Constitution, it is not an United States court. Indeed, we think that it is plainly recognized by the authorities cited in the McAllister case, *supra*, that the district courts of the Territories, when sitting in admiralty or administering the laws of Congress, are United States courts.

In *Clinton vs. Englebrecht, 13 Wallace, 448*, it is said:

"The process for summoning jurors to attend in such cases [referring to those arising under the Constitution and laws of the United States], may be a process for exercising the jurisdiction of the Territorial Courts when acting, in such cases, *as Circuit and District Courts of the United States.*"

In *Hornbuckle vs. Toombs, 18 Wallace, 656*, it is said:

"It is true that the District Courts of the Territory are, by the organic act, invested with the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States; and a portion of each term is directed to be appropriated to the trial of causes arising under the said Constitution and laws. Whether, when acting in this capacity, the said courts are to be governed by any of the regulations affecting the Circuit and District Courts of the United States, is not now the question."

In the dissenting opinion in the McAllister case, *supra*, an entirely different view was taken of the proper construction of Section 1768. This opinion did not at all take issue with the conclusion announced by the majority that the District Court of Alaska was not one of those mentioned in Article III of the Constitution. It simply contended that the exception contained in Section 1768 embraced all courts of the United States, regardless of the source from which Congress derived its power to create them. Whatever may be said of the correctness of its conclusion, the following language from the dissenting opinion cannot be gainsaid:

"The courts for the Territories, though not permanent, like the courts referred to in the constitution, are courts of the United States; they are created by the laws of the United States, and are designed to give that security and protection in the enforcement of the private rights of the inhabitants of the Territories which the courts in the States are empowered to give to their citizens, beside exercising some of the powers of the Federal courts. Their judges are appointed by the same authority, by the President, by and with the advice and consent of the Senate, and are secured their compensation from the Treasury of the United States. They enforce the laws of the United States," etc.

In *Hunt vs. Palao, 4 Howard, 589*, Chief Justice Taney, speaking of the Court of Appeals of the Territory of Florida, said:

"The territorial court of appeals was a court of the United States, and the control over its records, therefore, belongs to the general government, and not to the State authorities."

In revenue causes and in the exercise of an admiralty and maritime jurisdiction, the District Court of Alaska may, therefore, properly be denominated a District Court of the United States, and its judgments in such cases be governed on appeal by section 6 of the Act in question.

Subsequent to the decision in the McAllister case, this court determined that under Section 688 of the Revised Statutes, it was authorized to issue a writ of prohibition to the District Court of Alaska when proceeding as a court of admiralty.

In re Cooper, 143 U. S., 494.

In this case, it was said:

"Although we were of opinion when the application for the rule was made, and subsequently held, that the District Court for Alaska was not one of the courts mentioned in Article III of the Constitution, declaring that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress shall from time to time establish, we nevertheless concluded that where the District Court of Alaska was acting as a District Court of the United States and, as such, proceeding in admiralty, it came within that section, and this court had power to issue the writ of prohibition to that court in a proper case."

This language could not have been used except upon the theory that the District Court of Alaska, when proceeding in admiralty, as in the case at bar, was in fact a court of the United States. The same view is recognized in the later case of *Cross vs. United States, 145 U. S., 576*, where, in construing a different statute, the following language is used by this court:

"It is contended on behalf of the government that the writ of error will not lie because the Supreme Court of the District of Columbia is not a court of the United States, within the intent and meaning of the section. *McAllister vs. United States, 141 U. S., 174*, is cited with the decisions referred to therein, as sustaining that view; but it is to be remembered that that case referred to territorial courts only; and, moreover, if the disposal of the motion turned on this point the, words 'any court of the United States' are so comprehensive that, used as they are in connection with convictions subject to the penalty of death, the conclusion might be too technical that Congress intended to distinguish between courts of one class and of the other."

In the construction of the act in question, it may also be properly urged that "the conclusion might be too technical that Congress intended to distinguish between courts of one class and of the other". A complete system of review by appeal and writ of error is provided by the Act in question, and it was manifestly intended that the benefit of its provisions should apply to all courts exercising the jurisdiction and power of the Circuit and District Courts of the United States. By this Act, the appellate jurisdiction in cases arising under the revenue laws is limited to the Circuit Court of Appeals, and the judgment of that court in such cases is final. As we have seen, the District Court of Alaska sits as an United States District Court in administering these laws. There is no more reason why an appeal should not lie from that Court in such causes than from the United States District Courts of any of the districts of the several States. If, therefore, the language of the Act is not broad enough to embrace this appeal, it is manifest that it is a *casus omissus;* but as said in the case of *Durousseau vs. The United States, 6 Cranch, 318,* "it would be repugnant to every principle of sound construction, to imply an exception against the intent."

The chief difficulty involved in the first question certified by the court, as we view it, lies in determining whether the District Court of Alaska belongs to the Ninth Circuit, so that an appeal may be properly taken to the Circuit Court of Appeals of that Circuit.

As we have seen, prior to the Act of 1884, cases like the one at bar were triable within the courts composing the Ninth Circuit. By that act, however, the District Court of Alaska was created and given jurisdiction of these cases. No express provision of the statute embraces it within or assigns it to the Ninth Circuit.

We have pointed out that the sixth section of the act creating the Circuit Court of Appeals gives exclusive appellate jurisdiction to the Circuit Court of Appeals in cases arising under the revenue laws and in admiralty, subject only to review in this court on a certificate, as in the case at bar, and by certiorari. Can it be supposed that Congress intended to deny the right of review in such cases arising from the District Court of Alaska? It might, indeed, properly do, as we think it must be held to have done in this case, delegate to the Supreme Court the power to assign the Territory of Alaska to the proper circuit. In pursuance of the authority given by Section 15 of the Act, this court has made an order assigning the Territory of Alaska to the Ninth Circuit, and by virtue of that order, the Territory of Alaska should be deemed a part of the Ninth Circuit for the purpose of appeals.

II.

Is the District Court of Alaska a Supreme Court of a Territory within the meaning of section 15 of said Act, and the rule of this Court assigning the Territory of Alaska to the Ninth Circuit?

Whatever conclusion may be reached by this Court respecting the first question propounded to it, the answer to this question, we think, must be in the affirmative.

Section 15 is as follows:

"That the Circuit Court of Appeal in cases in which the judgments of the Circuit Courts of Appeal are made final by this act shall have the same appellate jurisdiction, by writ of error or appeal, to review the judgments, orders and decrees of the Supreme Courts of the several territories as by this act they may have to review the judgments, orders, and decrees of the District Court and Circuit Courts; and for that purpose the several territories shall, by orders of the Supreme Court, to be made from time to time, be assigned to particular circuits."

As has been pointed out in the opening pages of this brief, the District of Alaska is a Territory, and the court provided for by the act of 1884 is one of the "courts of the several territories." The case at bar is likewise one of the class "in which the judgments of the Circuit Courts of Appeal are made final" under the provisions of section 6 of the act creating that court. But one question remains for determination, viz: Is the District Court of Alaska one of the courts embraced within the term "the Supreme Courts of the several territories?" If it is, then the jurisdiction of the Circuit Court of Appeals is clear. If it is not, then it is manifestly a *casus omissus*, for Congress clearly intended by sec. 6 to give to the Circuit Court of Appeals the exclusive appellate review in cases arising under "the patent laws, under the revenue laws, and under the criminal laws and in admiralty cases." To hold that it is not, however, would be to "imply an exception against the intent," and such a construction will not be placed upon the act unless the words employed in it will bear no other reasonable interpretation.

Durousseau vs. United States, supra.

The question narrows itself to a determination of the sense in which the word "supreme" is used in the act. Was it used as a fixed and arbitrary designation of the *title* of the court from which alone appeals should lie under this section? Or was it used to designate the *character* of the court from which such appeals would lie?

Manifestly, we think the courts of the several Territories whose judgments are to be reviewed by the Circuit Court of Appeals, in the class of cases referred to in Section 15, are the courts of last resort of such Territories, and the name by which such courts may happen to be designated by the Act of Congress creating them is wholly immaterial. The character of the court was the material thing. The District Court of Alaska is the court of last resort of that Territory, and it has appellate jurisdiction over the only inferior courts of the Territory, viz., the Commissioners' Courts.

The word "supreme" is here used in the same way in which the words "supreme" and "inferior" were used in Section 1, Article III, of the Constitution. When it was declared by that article that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish," it was not meant to designate the title of those courts. It would have been entirely competent for Congress to have designated this court as the High Court of Appeals instead of the Supreme Court. The word "supreme" in the Constitution was no more employed as a term to express the title of the court than the word "inferior." As well might it be contended that the Circuit Courts and District Courts of the United States are not created under the Constitution, because not entitled "inferior" courts, as to contend that the court of last resort of the Territory of Alaska, by whatever title designated, is not embraced within the meaning of the word "supreme" employed in this act. The power and jurisdiction of the court are defined by Congress; the title is wholly immaterial, except as an appellation by which to designate it.

It is manifest that the word "supreme" as here used was meant by Congress to define the character of the courts and not to designate the title. Tested by this rule, the Circuit Court of Appeals has jurisdiction to hear and determine this appeal, and the second question certified to this court should be answered in the affirmative.

Nor can it be said that because in Sec. 13, Congress saw fit to make special provision for the United States court in the Indian Territory, argument is to be drawn that all provision for appeal to the Circuit Court of Appeals from the District Court of Alaska was omitted, either intentionally or otherwise. By Act of March 1, 1889 (Vol. 25, Stat. at Large, p. 783), a United States court was established whose jurisdiction extended over the Indian Territory. The powers and jurisdiction of that court, as well as the right of appeal to the Supreme Court of the United States, were fixed by the Act.

That court would doubtless have been embraced within the provisions of Sec. 15, but Congress saw fit to make a broader provision for it; instead of limiting the right of appeal from the United States court in the Indian Territory to the Circuit Court of Appeals, to which it might have been assigned, it expressly gave the right of appeal to both the Supreme Court of the United States and the Circuit Court of Appeals for the Eighth Circuit.

Moreover, the interpretation of section 15 here contended for has already been given it by the Supreme Court of the United States. In pursuance of the direction contained in the closing words of the Act, the Supreme Court, on the 11th day of May, 1891, made an order assigning the Territories to particular circuits in the following language: "Ordered, that under section 15 of the Act approved March 3, 1891, entitled 'An Act to establish Circuit Courts of Appeals,' and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes,' the Territories of Alaska and Arizona are assigned to the Ninth Judicial circuit, and the Territories of New Mexico, Oklahoma and Utah are assigned to the Eighth Judicial Circuit." (Appendix to 139 U. S., p. 707.)

We are advised that the question of jurisdiction in the case of *Noyes vs. The Silver Queen Mining Company* has likewise been certified to this court. That there may be no confusion, we beg to call the attention of this court to the fact that the question here under consideration is not involved in that case. That case not being one in which the judgment of the Circuit Court of Appeals is made final, is not covered by Sec.

15 of the Act creating the Circuit Court of Appeals. Nor does this fact indicate any oversight or omission on the part of Congress. The litigants in such cases are not left without their remedy on appeal. The right of appeal to the Supreme Court in such cases is manifestly not taken away by the Act creating the Circuit Court of Appeals. This point seems to be clearly decided by this court.

> *Shute vs. Keyser, 149 U. S. 649.*
> *Aztec Mining Company vs. Ripley, 151 U. S. 79.*

Should this court give a negative answer to both the questions propounded in the certificate of the Court of Appeals in this case, we respectfully invite the attention of the court to the power conferred by Sec. 6 of the Act to require the whole record and cause to be sent up for its consideration. The importance of the case, as well as the circumstances attending the appeal, are such as to entitle it to a hearing upon the merits. If this court shall determine that such hearing cannot be had by the Circuit Court of Appeals, then the very power which entitles it to determine that question authorizes it to consider the entire cause upon the merits.

At the time of taking the appeal from the District Court of Alaska, it was determined, upon a consideration of this question by counsel for both parties, that the Circuit Court of Appeals was the proper court to which the appeal should go, and stipulations signed by authority of the Department of Justice were accordingly entered into. After the submission of the cause, at the February term, 1895, of the Court of Appeals, the question of the jurisdiction of that court over appeals from the District Court of Alaska was raised in another case. In July, 1895, counsel for the government, in pursuance of leave obtained at the submission of the cause, filed a brief on the merits in which was contained a suggestion of the question of jurisdiction. After the filing of a reply brief, the cause was taken under advisement by the Court until more than two years had elapsed from the rendition of the judgment of the District Court of Alaska, which was rendered on September 18th, 1893, instead of December 18th, 1893, as stated in the certificate. Thus, through no fault or inadvertence of the appellant, all right to appeal directly to this Court from the District Court of Alaska, if such right exists in cases like the one at bar, has elapsed.

The Coquitlam is a Canadian vessel, which cleared from the port of Victoria, bound for the North Pacific Ocean, with supplies for certain Canadian sealing schooners. These schooners had likewise cleared from Canadian ports for the North Pacific Ocean, bound on sealing voyages. The Coquitlam delivered its merchandise to the schooners and received their catch of sealskins at various points in the North Pacific Ocean, but all admittedly outside of the three-mile limit. For this transfer and for her failure to carry a manifest of these skins and her other merchandise, both vessel and cargo were seized and subsequently libeled and upon a hearing declared forfeited by the District Court. While the case is of importance because of the great value of the properties involved, it is of still greater importance by reason of the legal questions involved. These questions concern both Governments, and the case, we are advised, has been the subject of diplomatic correspondence, Because of these facts, we trust that this case will in any event be determined upon its merits, either in the Court of Appeals or in this Court.

Respectfully submitted,

E. C. HUGHES,
Attorney for Appellant Thomas Earle.

H. G. STRUVE,
JOHN B. ALLEN AND
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Of Counsel.

Office Supreme Court U. S.
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CLERK.

In the Supreme Court of the United States.

October Term, 1895.

The Steamer Coquitlam, etc., Thomas Earle, and Union Steamship Company, claimants, appellants,
v.
The United States.
} No. 804.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE STEAMER COQUITLAM, ETC., THOMAS Earle, and Union Steamship Company, claimants, appellants, *v.* THE UNITED STATES.	No. 804.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Comes now the appellee in the above-entitled cause, The United States, by the Solicitor-General, and moves the court for leave to withdraw the motion heretofore filed on behalf of the United States in this cause on the 4th day of February, 1896.

HOLMES CONRAD,
Solicitor-General.

I consent to the granting of the above motion.

CALDERON CARLISLE,
Of Counsel for Appellants.